

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 15-cr-04268 KG

ANGEL DELEON, ET AL.,

Defendants.

**ORDER DENYING MOTION FOR EXTENSION
OF TIME TO APPOINT LEARNED COUNSEL**

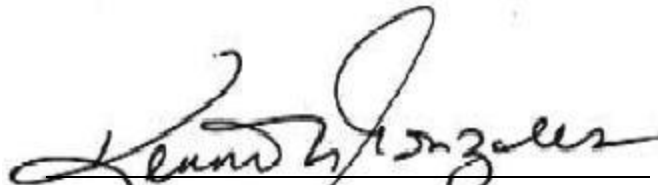
This matter comes before the Court on the United States' Motion for Extension of Time to Appoint Learned Counsel. Doc. 75. Defendant Jerry Montoya filed a response to the Motion and a Request for Immediate Appointment of Learned Counsel. Doc. 115. At a status conference, the Court heard brief argument on the question from defense counsel, including the Chief Federal Public Defender, capital case Resource Counsel, and the Assistant United States Attorney. Having considered the briefs, applicable statute, and judiciary policy, the Court denies the Motion for Extension.

Defendant Montoya is one of 24 defendants charged in a six-count indictment filed December 1, 2015. Nineteen defendants are charged with a capital crime. In such cases, the Court "shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases." 18 U.S.C. § 3005. As of the date of this Order, the Attorney General of the United States has not indicated whether she will seek a death sentence as to any of the charged defendants in this indictment. Section 3005, however, makes no distinction when a defendant is charged with a "capital crime" and requests two counsel.

Moreover, applicable judiciary policy requires prompt appointment of two counsel, including learned counsel. *See, e.g.*, Order Adopting CJA Plan, 15-MC-0004, (Doc. 27) (appointment of trial counsel "when a defendant is charged with a federal criminal offense for which the death penalty is possible"). The United States has not provided, nor has the Court found any clear law that authorizes an extension when a defendant requests two counsel as provided in section 3005. Accordingly, the United States' Motion is denied.

The Court notes that of the nineteen defendants charged with a capital crime, the Court is aware that six defendants, via current appointed counsel have formally or informally requested learned counsel. They are Billy Garcia, Eugene Martinez, Javier Alonso, Benjamin Clark, Jerry Montoya, and Anthony Ray Baca. The Capital Case Appointment Committee, which includes the Federal Public Defender, shall make recommendations to the Court promptly regarding appointment of learned counsel for each defendant presently charged in the instant indictment with a capital crime. Section 3005. The Court will then promptly make appropriate appointments of counsel.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE